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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/572,965	SAFFRE, FABRICE T. P.
	Examiner	Art Unit	
	KHOA HUYNH	2462	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>03 May 2010</u>.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>3 and 11-17</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>3 and 11-17</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>05/03/2010</u>.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____ .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

05/03/2010 has been entered.

Claim Status

2.   Claims 3, 11-12 are amended.

3.   Claims 1-2, 4-10 are cancelled.

4.   Claims 13-17 are newly added.

5.   Claims 3, 11-17 are currently presenting for examination, with claims 3, 11, and

12 being independent.

6.   This action has been made **NON-FINAL**.

Response to Arguments

7.   Applicants' arguments filed 05/03/2010 have been fully considered but are not

persuasive and moot in view of the new ground(s) of rejection.

8.   The followings are Examiner response to applicants' arguments.

9.   Examiner appreciates the fact that Applicant's representative goes on great length in the remarks to explain the differentiation between the prior art and the instant invention, however Applicant's representative seem to fail to grasp the manner in which the Examiner interprets the claims. Following are explanations of Examiner's interpretation of the claim language and the application of the prior art in light of the interpretation.

10.   Regarding Applicants' representative's discussions on page 7-9, the claim language states:

11.   *"using a measuring means to obtain a measurement of the usage that each member of the plurality of users made of the resource over a predetermined period,*

12.   *using a sorting means to place each member of the plurality of users that currently have active connections to the resource in a rank order relative to one another, the ranking being made according to the measurements, made using the measurement means, of the usage that each member made of the resource,*

13.   *using a calculating means to apply a restriction factor to each user according to that user's position in the rank order and how many users currently require access, thereby restricting availability of the resource to each of the plurality of users that currently have active connections to the resource."*

14.   For ease of understanding, all the claim language is saying is to obtain a measurement of usage for each user. Considering only users that currently have active

connections, rank them according to usage, apply a restriction factor to each. Restrict access to only users that have active connections.

15.   Notice the claim language doesn't explain how the ranking is done. Since it only states "the ranking being made according to the measurements", it could be ranking the users based on the last digit of the measurements, odd number, prime number..., pseudo random...

16.   Notice the claim language also doesn't explain how a restriction factor is applied. Since it only states "apply a restriction factor to each user according to that user's position in the rank order and how many users currently require access", it could be that the user in the middle of the rank gets higher restriction factor, even numbered user get higher restriction factor... Furthermore, "how many users currently require access" is interpreted by Examiner as "how many users currently have active connections" since "users currently require access" is not supported by the specification as detailed in the 112 rejection below. Since only "users currently have active connections" are considered for the sorting, ranking, applying, of course the restriction factor would be applied according to how many users currently require access.

17.   Then after that, all these "sorting, ranking, applying" are done for naught since the next limitations only state "restricting availability of the resource to each of the plurality of users that currently have active connections to the resource". All the computing time and process could be save by instead of doing all these "sorting, ranking, applying", applicants could have just obtain a list of "users that currently have active connections to the resource" and restricting availability of the resource to those

users. Actually Examiner also wonders whether "restricting availability of the resource to each of the plurality of users that currently have active connections to the resource" is necessary since users that currently don't have active connections to the resource cannot obtain the resource anyway. It's like saying we have a sale at our store, but the sale is only available to people who are in our store.

18.   Notice the preamble is not accorded any patentable weight since it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

19.   In view of the above, Examiner is confident that Applicants would surely agree that prior art Amalfitano, Marsh, and Otis clearly teaches the invention as claimed. In general, Amalfitano describes a technique of allocating resource to users that are currently requesting it based on their usage history (Amalfitano, page 1, paragraph 8). Amalfitano further describes how users are prioritized/sorted based on usage (Amalfitano, page 3, paragraph 37-41) and how restriction factors are applied to users (Amalfitanio, page 3, paragraph 43 to page 4, paragraph 58). Marsh and Otis complemented various minor deficiencies of Amalfitanio by provides details on ranking and various means for performing the technique. Detailed rejections can be seen in next sections.

20.   On page 9, regarding the term "unity" in claim 13, Applicants' representative

argues that even though "unity" means "one", it actually means "allocate the entire

resource" in the invention, however the claim language only states "the restriction factor

allocated to the user having made the least usage over the previous period is unity". In

fact, if Applicants examine claim 11, which claim 13 depends on, mentions only "using a

calculating means to apply a restriction factor to each user according to that user's

position in the rank order and how many users currently require access, thereby

restricting availability of the resource to each of the plurality of users that currently have

active connections to the resource". Nowhere in the claim's language mentions anything

about user having made the least usage is allocated the entire resource. Therefore,

Examiners believes Amalfitanio clearly teaches the claim language as written

(Amalfitano, page 4, paragraph 56, for two priority levels, restriction factor allocated to

user having made the least usage is x=1.08, as the number of priority levels increases,

x will go to 1, unity).

21.   On page 9-10, regarding the term "unique" in claims 16, 17, "unique" has to be

considered in view of something else. For example, if you have five yellow cats and one

black cat, the black cat is unique in term of color. If you bring that same black cat and

put it together with five black cats, it is no longer unique in term of color, however it is

still unique in term of other features such as eyes, mouths... Examiner thinks

Applicants' representative wants "unique" to be interpreted as "different". Examiner also

understands why Applicants' representative is reluctant to put "different" into the claim

language because since the ranking is made according to usage, what happens if two

users have the same usage, would their ranking still be unique but not different? That is

some food for thought. Therefore, Examiners believes Amalfitanio clearly teaches the

claim language as written (Amalfitano, page 1, paragraph 8, assigning priority levels to

users based upon usage's history, user's priority level is unique with respect to users of

other priority levels).

Claim Objections

22.   Claim 13 is objected to because of the following informalities: For claim 13, the

phrase "the restriction factor allocated to the user having made the least usage over the

previous period is unity" is unclear since claim 11 which claim 13 depends on only

discuss about "apply a restriction factor" and mentions nothing about "the user having

made the least usage over the previous period". Possible antecedent basis problem.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

23.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of
> making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the
> art to which it pertains, or with which it is most nearly connected, to make and use the same and shall
> set forth the best mode contemplated by the inventor of carrying out his invention.

24.   **Claims 3, 11-17** are rejected under 35 U.S.C. 112, first paragraph, as failing to

comply with the written description requirement. The claim(s) contains subject matter

which was not described in the specification in such a way as to reasonably convey to

one skilled in the relevant art that the inventor(s), at the time the application was filed,

had possession of the claimed invention.

25.   Regarding claim 3, 11-17, specifically claims 3, 11, 12, 17 contain limitation

"users currently require access" and "user requiring access". The original specification

only discusses about users "currently on line" and "have active connections". Since the

claim language doesn't specify what the communications resource is, the device could

be online and have active connections but not requiring access to such resource.

26.   Regarding claim 12-17, specifically claim 12, contains means plus function

language which invoke 35 U.S.C. 112, sixth paragraph. However, the written description

fails to disclose the corresponding structure, material or acts for the claimed function.

Specifically the specification only discloses that controlling access is performed entirely

in software (see page 5, line 34 to page 6, line 2) and fails to disclose any program or

algorithm, and more than routine experimentation would be required of one skilled in the

art to generate such program.

Claim Rejections - 35 USC § 112

27.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

28.   **Claims 3, 11-17** are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

29.   Regarding claim 3, 11-17, specifically independent claims 3, 11, 12, the phrase "a measure, made over a previous period, of usage of that resource relative to usage made by other members of the said plurality of users" is unclear due to the following reasons. First, how does "a measure" relates to "a measurement" in subsequent limitations? Second, to who such "a measure, made over a previous period, of usage of that resource" belongs to, one of the plurality of users or a totally different user? Third, does "usage made by other members of the said plurality of users" also made over a previous period or is it the current period? Fourth, the limitations "restricting availability of the resource to each of the plurality of users that currently have active connections to the resource" indicates that only the users that currently have active connections to the resource are considered while "controlling access to a communications resource in which capacity made available to each of a plurality of users" indicates that all users are considered.

30.   Regarding claim 12-17, specifically claim 12, contains means plus function language which invoke 35 U.S.C. 112, sixth paragraph. However, the specification doesn't expressly recite the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function. Specifically the specification only discloses that controlling access is performed entirely in software (see page 5, line 34 to page 6, line 2) without providing some detail about the means to accomplish the function, therefore would not be an adequate disclosure of the corresponding structure to satisfy the requirements of 35 U.S.C. 112, second paragraph.

Claim Rejections - 35 USC § 103

31.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

32.   The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating
obviousness or nonobviousness.

33.   **Claims 11-13, 16-17** are rejected under 35 U.S.C. 103(a) as being unpatentable

over Amalfitano, US 2001/0033557 in view of Marsh, US 2006/0014519 and Otis US

6,085,241.

34.   **For claim 11, 12**. Amalfitano teaches: A method/apparatus of controlling access

to a communications resource in which capacity made available to each of a plurality of

users is limited to a maximum value which bears an inverse relationship to a measure,

made over a previous period, of usage of that resource relative to usage made by other

members of the said plurality of users (Amalfitano, page 1, paragraph 8, lines 8-15,

users that demand more access over time are allocated few resources than users that

have historically used fewer resources, fig 1 shows such apparatus), said

method/apparatus comprising:

using a measuring means to obtain a measurement of the usage that each

member of the plurality of users made of the resource over a predetermined period,

(Amalfitano, fig 2, page 3, paragraph 40, usage of each user over a period is being

measured)

using a sorting means to place each member of the plurality of users that

currently have active connections to the resource in a rank order relative to one another,

the ranking being made according to the measurements, made using the measurement

means, of the usage that each member made of the resource, (Amalfitano, page 3,

paragraph 37-41, users are given priorities based on usage)

using a calculating means to apply a restriction factor to each user according to

that user's position in the rank order and how many users currently require access,

(Almalfitanio, page 3, paragraph 43 to page 4, paragraph 58 discussions how restriction

factor are applied to user according to priorities)

thereby restricting availability of the resource to each of the plurality of users that

currently have active connections to the resource, (Almafitanio, page 3, paragraph 41,

since requests for access are queued, only users that put in requests for access are

allocated resource)

Even though Amalfitano briefly mentions that users are given priorities based on usage, Amalfitano doesn't distinctly teach ranking users relative to one another based on usage

Marsh from the same or similar fields of endeavor teaches: ranking users relative to one another based on usage (Marsh, page 1, paragraph 12, ranking users in order based on usage parameter)

Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the teachings of Marsh into Amalfitano, since Amalfitano suggests a technique for controlling access to resource to resource based usage, and Marsh suggests the beneficial way of including ranking users based on such usage in such technique (Marsh, page 1, paragraph 12) in order to provide fair and efficient resource distribution to users in the analogous art of communication.

Even though Amalfitano briefly mentions about an apparatus for performing the above technique, Amalfitano doesn't distinctly teach the various means for performing the technique

Otis from the same or similar fields of endeavor teaches: various means for performing the technique (Otis, fig 1, 2, column 4, lines 16-19, column 5, lines 32-35, shows system contains various means such as bandwidth manager 10, CPU 11... for performing the technique;)

Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the teachings of Otis into Amalfitano and Marsh, since Amalfitano suggests a technique for controlling access to resource to resource,

and Otis suggests the beneficial use of bandwidth manager and CPU to implement such

technique (Otis, column 4, lines 16-19, column 5, lines 32-35) since it is well-known in

the art to use bandwidth manager to measure resources and CPU to perform

calculation in the analogous art of communication.

35.   **For claim 13**. Amalfitano, Marsh and Otis disclose all the limitations of claim 11,

and Amalfitano further teaches: in which the restriction factor allocated to the user

having made the least usage over the previous period is unity. (Amalfitano, page 4,

paragraph 56, for two priority levels, restriction factor allocated to user having made the

least usage is x=1.08, as the number of priority levels increases, x will go to 1, unity)

36.   **For claim 16**. Amalfitano, Marsh and Otis disclose all the limitations of claim 11,

and Amalfitano further teaches: in which each user is given a unique ranking.

(Amalfitano, page 1, paragraph 8, assigning priority levels to users based upon usage's

history, user's priority level is unique with respect to users of other priority levels)

37.   **For claim 17**. Amalfitano, Marsh and Otis disclose all the limitations of claim 12,

and Amalfitano further teaches: in which the sorting means is arranged to give a unique

ranking to each said user requiring access. (Amalfitano, page 1, paragraph 8, assigning

priority levels to users based upon usage's history, user's priority level is unique with

respect to users of other priority levels)

38.   **Claims 14 and 15** are rejected under 35 U.S.C. 103(a) as being unpatentable

over Amalfitano, US 2001/0033557 in view of Marsh, US 2006/0014519 and Otis US

6,085,241 and further in view of Chuah US 6,567,416.

39.   **For claim 14**. Amalfitano, Marsh and Otis disclose all the limitations of claim 12,

however Amalfitano, Marsh and Otis fail to teach: associated with a modem associated

with a server controlling access to the internet.

Chuah from the same or similar fields of endeavor teaches: associated with a

modem (Chuah, fig 1 element 4, modem is associated with the network) associated with

a server controlling access to the internet (Chuah, fig 1, element 14: server is capable of

controlling access to the internet 20)

Thus it would have been obvious to one of ordinary skill in the art at the time the

invention was made to implement the teachings of Chuah into Amalfitano, Marsh and

Otis, since Amalfitano suggests a technique for controlling access to resource, and

Chuah suggests the beneficial use of modem and server when implementing such

technique since this configuration is "typically utilized today to provide remote internet

access through modems to user computers" (Chuah, column 1, lines 38-40) in the

analogous art of communication.

40.   **For claim 15**. Amalfitano, Marsh and Otis disclose all the limitations of claim 12,

however Amalfitano, Marsh and Otis fail to teach: associated with a switching system

for controlling access to an internet service provider.

Chuah from the same or similar fields of endeavor teaches: associated with a

switching system for controlling access to an internet service provider (Chuah, fig 1,

element 6: PSTN, public switch telephone network controls access to element 10: ISP,

internet service provider)

Thus it would have been obvious to one of ordinary skill in the art at the time the

invention was made to implement the teachings of Chuah into Amalfitano, Marsh and

Otis, since Amalfitano suggests a technique for controlling access to resource, and

Chuah suggests the beneficial use of switching system when implementing such

technique since this configuration is "typically utilized today to provide remote internet

access through modems to user computers" (Chuah, column 1, lines 38-40) in the

analogous art of communication.

Allowable Subject Matter

41.   Claim 3 would be allowable if rewritten or amended to overcome the rejection(s)

under 35 U.S.C. 112, 1st and 2nd paragraphs, set forth in this Office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to KHOA HUYNH whose telephone number is (571) 270-

7185. The examiner can normally be reached on Monday - Friday: 10:00 AM - 6:30

PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SEEMA RAO can be reached on (571) 272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. H./
Examiner, Art Unit 2462

/Donald L Mills/
Primary Examiner, Art Unit 2462